

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

MONROE DIVISION

DANA THOMAS MURPHY, ET AL.

CIV. ACTION NO. 07-864

VERSUS

JUDGE ROBERT G. JAMES

FORD MOTOR COMPANY, INC., ET AL.

MAG. JUDGE KAREN L. HAYES

MEMORANDUM ORDER

On September 14, 2009, the Court issued a Ruling and Order [Doc. Nos. 106 & 107] addressing several pending motions in limine filed by the parties. One of the motions was a Motion in Limine to Exclude Plaintiffs' BEI Static Deployment Air Bag Tests [Doc. No. 50] filed by Defendant Ford Motor Company ("Ford"). In its motion, Ford argued that the BEI tests, report, and videotape should be excluded from evidence because they are not substantially similar to the subject accident, and Plaintiff Dana Thomas Murphy ("Murphy") cannot lay a proper foundation for their admission.

Unbeknownst to the Court, the parties reached an agreement that Ford would stipulate on the issue of foundation. Accordingly, the issue remaining was whether the BEI tests, report, and videotape were otherwise inadmissible.

After hearing additional information and facts from counsel during in-Chambers meetings and sidebars, the Court finds that Murphy has an expert, her biomechanic, Robert Anderson, who can explain the test results and report, although he did not conduct the tests himself. Thus, contrary to the Court's previous ruling, Murphy has satisfied the requirement that she provide expert

testimony to explain the BEI tests.

The remaining issue is whether the BEI tests had to be substantially similar to the subject accident. Under the case law in this Circuit, demonstrative evidence offered as a reenactment of disputed events must be substantially similar to the event, but demonstrative evidence offered as an illustration of general scientific principles need not be substantially similar, as long as it is not misleading. *Muth v. Ford*, 461 F.3d 557, 566 (5th Cir. 2006). After further explanation from Murphy's counsel, the Court finds that Murphy is offering the BEI tests, report, and videotape to demonstrate the scientific/engineering principles of full-powered versus de-powered air bag deployments. That being the case, the evidence is admissible if it is not misleading to the jury.

After further review, the Court finds that the BEI tests and report are not misleading given their intended use by Murphy and that any potential confusion can be addressed by Ford during cross-examination of Anderson. Accordingly, the BEI tests and report are admissible. To this extent, the Court's previous Ruling and Order are AMENDED, and Ford's motion is DENIED IN PART.

However, the Court still has serious concerns that the jury would give undue weight or consideration to the demonstrative video and may view it as a re-creation of the accident. To this extent, Ford's motion is GRANTED IN PART, and the videotape is excluded from evidence.

MONROE, LOUISIANA, this 14th day of September, 2009.


ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE